
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No. 3978 of 2007

Date of decision: 10.9.2007

Amarjit Singh

...Petitioner

Versus

Avtar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Munish Sharma, Advocate for the petitioner.

Mr. G. S. Punia, Advocate for the respondents

RAJESH BINDAL, J.

The prayer made in the present petition, is to set aside the order dated May 11, 2007 passed by the Civil Judge (Junior Division), Kharar whereby application of the petitioner for leading secondary evidence for proving the will dated May 27, 1998 has been dismissed.

Learned counsel for the petitioner submits that a will was executed by late Fauja Singh in favour of the petitioner and his brother Naib Singh-respondent no.3, which was duly registered on May 27, 1998. He submits that plea regarding the will was taken by him in the written statement filed as according to him the original will is in possession of respondent no.3-Naib Singh his brother, he was unable to produce the same and accordingly prayed for production of the same by leading secondary evidence. He submitted that there is no question of tampering or fabrication of the document as it is a registered document and even otherwise the petitioner will have to lead other evidence to prove the effect thereof.

On the other hand, learned counsel for the respondents submitted that ingredients of Section 65 of the Indian Evidence Act are not satisfied in the present case to permit the petitioner to lead secondary evidence. The loss of document is not proved. Accordingly, he prays that

the petitioner should not be permitted to lead secondary evidence to prove the will.

Having heard learned counsel for the parties, I find merit in the contention raised by learned counsel for the petitioner. Petitioner/defendant had taken a plea in the written statement regarding the will and in the application for secondary evidence, it is specifically mentioned that the will is in possession of respondent no.3, however, it is not being produced by him. As the same is a registered document, the petitioner be permitted to lead secondary evidence. In my opinion, prima facie, there exist conditions which entitle the petitioner to lead secondary evidence to prove the will. However, the effect of the will and the existence thereof at the time of death of the executor will be considered on the basis of evidence to be led by the parties.

Accordingly, the petition is allowed. The petitioner is granted an opportunity to lead secondary evidence to prove the will. As this is a unfortunate litigation between the brothers/family members which is pending for the last more than 5 years, the trial Court is directed to expedite the hearing.

September 10, 2007
Pka

(Rajesh Bindal)
Judge